

# GRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA RECORDATION NO. 9843 Filed 1425

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

NOV 17 1978 2 35 PM

INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE  
BRUCE BROMLEY  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DE KOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN

JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID O. BROWN  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON

9843

TELEX  
HCA 233663  
WUD 125547  
RECORDATION NO. 9843 Filed 1425

NOV 17 1978 2 35 PM

INTERSTATE COMMERCE COMMISSION

9843

Date NOV 17 1978  
Fee \$ 200.00

RECORDATION NO. 9843 Filed 1425

NOV 17 1978 2 35 PM

INTERSTATE COMMERCE COMMISSION

November 17, 1978

Diamond Shamrock Corporation

Lease Financing Dated as of July 15, 1978

Dear Sir:

Enclosed herewith for recordation pursuant to Section 20c of the Interstate Commerce Act are six counterparts of each of the following:

(1) Purchase Order Assignment dated as of July 15, 1978, among Diamond Shamrock Corporation, 1100 Superior Avenue, Cleveland, Ohio 44114 (the "Lessee"), Exchange National Bank of Chicago, as Owner-Trustee (the "Lessor"), LaSalle and Adams Streets, Chicago, Illinois 60690; ACF Industries Incorporated, 750 Third Avenue, New York, N. Y. 10017; and Tank Lining Corp., Post Office Box H, Oakdale, Pennsylvania 15071;

(2) Lease of Railroad Equipment dated as of July 15, 1978, between the Lessee and the Lessor;

(3) Security Agreement dated as of July 15, 1978, between the Lessor and First Pennsylvania Bank N.A., as Agent, 1500 Chestnut Street, Philadelphia, Pennsylvania 19102 and

RECEIVED

Counterspart Larry Jones

COUNSEL

ROSSELL L. GILPATRIC  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER

CARLYLE E. MAW  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 280530

33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901

CABLE ADDRESSES

GRAVATH, N. Y.  
GRAVATH, PARIS  
GRAVATH, LONDON E.C. 2

RECORDATION NO. 9843 Filed 1425

NOV 17 1978 2 35 PM

INTERSTATE COMMERCE COMMISSION

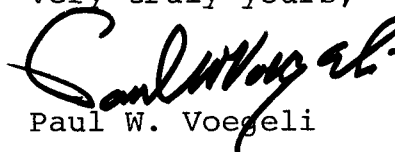
—C  
(4) Lease dated as of July 15, 1978, between the Lessor and NAC Leasing Corporation, 222 South Riverside Plaza, Chicago, Illinois 60606.

The Equipment covered by the Agreements described above consists of 100 100-ton roller bearing-CF 5250 hopper cars, equipped with 20" hatches and pneumatic outlets, built generally to specification No. SCL-CF-SS2 bearing road numbers DAX 2101 through 2200, both inclusive.

Each unit bears the legend "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c".

Enclosed is a check for \$200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts and the enclosed copy of this letter with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

  
Paul W. Voegeli

The Honorable H. G. Homme,  
Acting Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

L

BY HAND

L E A S E

RECORDATION NO. 9843C  
NOV 17 1978 2 35 PM  
INTERSTATE COMMERCE COMMISSION  
Filed 1425

THIS LEASE ("Lease") dated as of July 15, 1978, is between EXCHANGE NATIONAL BANK OF CHICAGO ("Lessor"), a national banking association, not in its individual capacity, but solely as Owner-Trustee under a Trust Agreement dated as of July 15, 1978, with Security Pacific Equipment Leasing, Inc., as Beneficiary ("Beneficiary") and NAC LEASING CORPORATION ("Lessee"), a Delaware corporation, with its principal office at 222 South Riverside Plaza, Chicago, Illinois.

WHEREAS, Lessee has created and structured for Lessor a proposed 20-year leveraged lease transaction initially covering 100 covered hopper cars (collectively the "Units" and individually a "Unit"); and

WHEREAS, Lessee has arranged for Lessor and Diamond Shamrock Corporation to enter into a twenty-year lease of railroad equipment ("Diamond Shamrock Lease") dated July 15, 1978, covering the railroad equipment described therein, a copy of said Diamond Shamrock Lease being attached hereto as Exhibit A;

NOW, THEREFORE, Lessor and Beneficiary agree to lease to Lessee and Lessee agrees to hire from Lessor and Beneficiary certain personal property described in the Schedule (the "Schedule") attached hereto and made a part hereof, upon the terms and conditions hereinafter set forth:

Section 1. Delivery and Acceptance.

1.1 The Lessor hereby appoints the Lessee its agent for the inspection and acceptance of the Units to be delivered to Lessor pursuant to Section 14 of the Diamond Shamrock Lease. Lessor will cause each Unit to be delivered to the Lessee on or prior to January 1, 1999, (or such later date as delivery actually occurs) upon such

Lease for the period from and after the date of such termination until January 1, 1999. Additionally, should the Beneficiary be unable or unwilling to provide the certificate required pursuant to subsection 1.2 hereof Lessee at its option may waive such requirement. In the event the certificate provided pursuant to subsection 1.2 hereof specifies any Event of Default, liens or encumbrances, Lessee shall not be obligated to lease any affected Unit(s), if such default, lien or encumbrance in the reasonable determination of Lessee would prevent its quiet enjoyment of the Unit(s) during the term of this Lease or would adversely affect Lessee's remedies against Diamond Shamrock Corporation under the assignment contemplated by subsection 1.3 hereinabove.

Section 2. Term, Rent and Payment.

2.1 The term of this Lease as to each Unit subject to this Lease shall commence on 12:00 midnight, January 1, 1999 (or such later date of delivery as shall occur in accordance with subsection 1.1 hereof), and continue as specified in the Schedule.

2.2 The rental for each Unit shall be in the amount set forth in the Schedule and shall be payable at the times set forth in the Schedule.

2.3 Rent and all other sums due Lessor hereunder shall be paid to the Lessor at its principal office located at LaSalle and Adams Street, Chicago, Illinois, or such other place as Lessor shall reasonably designate in writing.

2.4 This Lease is a net lease and Lessee shall not be entitled to any abatement or reduction of rent or any setoff against rent, whether arising by reason of any past, present or future claims of any nature by Lessee against Lessor or otherwise. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall

storage tracks within the Continental United States as the Lessee shall designate. Lessee shall make such designation on or prior to November 1, 1998. If the Lessee has not made such designation prior to November 2, 1998, then the Lessor shall cause the Units to be delivered to the Lessee upon such storage tracks as Lessor shall reasonably designate.

1.2 On or prior to January 1, 1999, the Beneficiary shall deliver to the Lessee a certificate of an officer of the Beneficiary having knowledge of the facts dated as of January 1, 1999, stating that:

(i) the Diamond Shamrock Lease has not been terminated by reason of a default thereunder;

(ii) a review of the Diamond Shamrock Lease has been made under his supervision and that to the best of his knowledge, Diamond Shamrock Corporation has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained therein and (1) that no event has occurred or is continuing which with given notice or passage of time or both would constitute an Event of Default or (2) specifying any such event(s) (as defined in the Diamond Shamrock Lease);

(iii) the schedule attached to the certificate contains a complete listing of all the Units including identifying numbers) which are then subject to the Diamond Shamrock Lease; and

(iv) to the best of his knowledge (1) the Units are free and clear of any liens or encumbrances or (2) specifying any known liens or encumbrances.

For the purposes of the foregoing certificate the Beneficiary may specifically exclude those obligations of Diamond Shamrock Corporation which are contained in the first paragraph of Section 7 of the Diamond Shamrock Lease.

1.3 Lessee upon receipt of the foregoing certificate shall execute and deliver to Lessor an Acceptance Supplement for each Unit specified in the Schedule attached to the Certificate provided for in subsection 1.2 hereof in the form attached hereto dated as of January 1, 1999 (or such later date as delivery actually occurs), indicating that each such Unit delivered to Lessee in accordance with subsection 1.1 hereof has become subject to the provisions of this Lease. Simultaneous to the Lessee's execution of the Acceptance Supplement the Lessor (and Beneficiary) shall assign, such assignment to be in the form reasonably acceptable to counsel for Lessee and such acceptance shall not be unreasonably withheld, to Lessee any and all of its rights against Diamond Shamrock Corporation that may accrue as a result of Diamond Shamrock Corporation's failure to have kept, performed or fulfilled any or all of its obligations contained in the first paragraph of Section 7 or in Section 14 of the Diamond Shamrock Lease.

1.4 Notwithstanding anything else herein contained, Lessor shall have no obligation to lease the Units to Lessee and Lessee shall have no obligation to lease the Units from Lessor if the Diamond Shamrock Lease shall have been terminated by reason of an Event of Default (as defined in the Diamond Shamrock Lease) unless Lessee shall have exercised its option (which Lessor hereby grants to Lessee in the event of such termination of the Diamond Shamrock Lease) to lease the Units at the same rental and pursuant to the same terms and conditions as are contained in the Diamond Shamrock

the obligations of Lessee be otherwise affected by reason of any defect in, damage to, loss of possession or use or destruction of any of the Units however caused, by the attachment of any lien, encumbrance, security interest or other right or claim of any third party to any Unit, by any prohibition or restriction of or interference with Lessee's use of the Unit by any person or entity, or by the insolvency of or the commencement by or against Lessee of any bankruptcy, reorganization or similar proceeding, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties that all rent and other amounts payable by Lessee hereunder shall be payable in all events in the manner and at the times herein provided unless Lessee's obligations in respect thereof have been terminated pursuant to the express provisions of this Lease.

Section 3. Warranties.

3.1 LESSEE ACKNOWLEDGES AND AGREES (a) THAT LESSOR HAS NOT SELECTED THE DESIGN, SIZE, CAPACITY OR MANUFACTURER OF ANY UNIT, (b) THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (c) THAT LESSOR IS NOT A MANUFACTURER THEREOF NOR A DEALER IN PROPERTY OF SUCH KIND, and (d) THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION OR WARRANTY OR COVENANT WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF ANY SUCH UNIT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE.

Lessor hereby assigns to Lessee, to the extent assignable, any warranties, covenants and representations to which it may be entitled with respect to any Unit, provided that any action

taken by Lessee by reason thereof shall be at the sole expense of Lessee and shall be consistent with Lessee's obligations pursuant to Section 2 hereunder.

Section 4. Possession, Use and Maintenance.

4.1 Lessee shall not use, operate, maintain or store any Unit improperly or carelessly and Lessee agrees to comply in all respects (including, without limiting, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the Interchange Rules of the Association of American Railroads ("AAR") and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, Lessee will conform therewith at its own expense; provided, however, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect the property or rights of Lessor under this Lease.

As long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an encumbrance created by the Lessor or resulting



from claims against the Lessor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto or the interest of the Lessor, or the Lessee therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner which does not, in the reasonable opinion of the Lessee, adversely affect the title of the Lessor, the Units or the Lessor's interest under this Lease.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics', workmen's, repairmen's or other like liens arising to the ordinary course of business and, in each case, not delinquent.

As long as Lessee shall not be in default under this Lease, the Lessee shall be entitled to sublease the Units, and any such sublease shall in its terms be expressly subordinate to the term of this Lease and Lessor's rights hereunder. Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the location specified in the Schedule.

4.2 Lessee shall at its sole expense at all times during the term of this Lease maintain the Units in good operating order, repair and condition.

4.3 Lessee shall not alter any Unit or affix or install any accessory, equipment or device on any Unit, if such alteration or addition will impair the originally intended function or use

(unless required to do so by a duly authorized governmental or regulatory agency) or reduce the value of any such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished, affixed, or installed to or on any Unit shall thereupon become the property of Lessor except that, if no Event of Default has occurred and is continuing, Lessee may remove at its expense any such accessories, equipment and devices at the expiration of the term with respect to such Unit, provided that such removal will not impair the originally intended function or use of such Unit and such accessory, equipment or device will thereupon become the property of the Lessee.

4.4 Lessee will cause each Unit to be kept numbered with the identifying number set forth in the Acceptance Supplement applicable thereto, and keep and maintain, permanently, distinctly, and conspicuously marked on each side of each Unit in letters not less than one inch in height the words "Ownership subject to a Lease Agreement filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and property in such Unit and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit unless and until a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by Lessee or its sublessees.

4.5 Upon prior notice to Lessee, Lessor shall have the right at all times convenient to the Lessee to enter upon the properties of the Lessee to inspect any Unit and observe its use at Lessor's expense.

#### Section 5. Taxes.

5.1 All payments to be made by Lessee hereunder will be free of expense to Lessor with respect to the amount of any local, state or federal taxes including gross receipts taxes (other than any federal, state or local net income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided other than in the States of Washington and West Virginia) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties, together with any interest payable with respect thereto being hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under

the terms hereof, all of which Impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of Lessee, adversely affect the title, property or rights of Lessor hereunder. If any Impositions payable by Lessee shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of an invoice therefor of the Lessor in the reasonable opinion of independent counsel shall have been liable with respect thereto or if the Lessee shall have approved in writing the payment thereof.

5.2 In the event any reports with respect to Impositions are required to be made, Lessee shall make such reports in such manner as shall be reasonably satisfactory to Lessor.

#### Section 6. Risk of Loss; Waiver and Indemnity.

6.1 In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise

(any such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, Lessee shall promptly and fully notify Lessor with respect thereto. On the rental payment date next succeeding such notice Lessee shall pay to Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the Schedule) of such Unit as of the date of such payment as set forth in the Schedule. Upon the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of loss, theft or complete destruction) Lessor shall be entitled if it so elects to recover possession of such Unit at its expense. Provided that Lessor has received the Casualty Value for any Unit, Lessee shall be entitled to the proceeds of any recovery in respect of such Unit from insurance or otherwise to the extent that they do not exceed the Casualty Value of such Unit, and any excess shall be retained by Lessor.

Except as hereinabove in this subsection 6.1 provided, Lessee shall not be released from its obligations hereunder from and after the Availability Date with respect to such Unit until Lessee shall have fulfilled all of its obligations hereunder and Lessee shall bear the risk of any Casualty Occurrence to any Unit from and after said Availability Date with respect to such Unit until such Unit has been redelivered to Lessor pursuant to Section 9 hereof.

6.2 Lessee hereby waives and releases any claim now or hereafter existing against Lessor on account of, and agrees to indemnify, reimburse and hold Lessor harmless from, any and all claims (including, but not limited to, claims relating to patent infringement and claims based upon strict liability in tort), losses, liabilities, demands, suits, judgments or causes of action, and all legal proceedings, and any costs or expenses in connection therewith, including attorneys' fees and expenses which may result from or arise in any manner out of the manufacture, ownership, leasing, condition, use or operation of any Unit during the term hereof, or which may be attributable to any defect in any Unit, arising from the material or any article used therein or from the design, testing or use thereof, or from any maintenance, service, repair, overhaul or testing of any Unit regardless of when such defect shall be discovered, whether or not such Unit is in the possession of Lessee and no matter where it is located.

Section 7. Insurance.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, or, if Lessee does not own similar equipment, by Lessee's parent or any subsidiary or affiliate of Lessee owning similar equipment; provided, however,

that the Lessee may self-insure any Unit to the extent that it, its parent and any subsidiary or affiliate of Lessee self-insures similar equipment so owned. Notwithstanding the foregoing, Lessor shall otherwise obtain insurance in such amounts, for such risks and with such carriers as Lessor may reasonably request.

Section 8. Default.

8.1 If, during the term of this Lease, one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made by Lessee in the making of any payments to Lessor when due hereunder and such default shall continue for a period of eight days.

(b) Any representation or warranty of Lessee or Tiger Leasing Group, Inc., as Guarantor, under a guarantee agreement dated as of the date hereof contained herein or in any document furnished to Lessor in connection herewith shall be untrue, misleading or incorrect in any material respect when made;

(c) Default shall be made in the observance or performance of any of the other covenants, conditions, agreements or warranties made by Lessee hereunder and such default shall continue for thirty days after written notice thereof to Lessee;

(d) Lessee or Guarantor shall commit any affirmative act of insolvency, or file any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or

(e) Any involuntary petition shall be filed under any bankruptcy statute against Lessee or Guarantor, or any receiver or trustee shall be appointed to take possession of the properties of Lessee or Guarantor, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment; then, in any such case, Lessor, at its option may:

(aa) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(bb) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon the premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold the same free from any right of Lessee, its successors or assigns, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due and which will accrue (including the present value of the next rental payment) and the then applicable casualty value to and including the next semi-annual payment



date, or to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semi-annually at the same frequency as rentals are paid hereunder, from the respective dates upon which rentals would have been payable hereunder had the Lease not been terminated, and (ii) any damages and expenses in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty contained in this Lease other than for the payment of rental.

8.2 In the event of any action at law or suit in equity in relation to this Lease, Lessee in addition to all other sums which Lessee may be required to pay, will, if Lessor prevails in such action or suit, pay to Lessor a reasonable sum for its attorneys' fees and all other costs and expenses of such action or suit.

8.3 The remedies hereunder provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

Section 9. Return of Units.

On or prior to the expiration of the term of this Lease or of any renewal term (hereinafter collectively "Expiration Date") or as soon as practicable on or after such Expiration Date and in any event not later than sixty (60) days after such Expiration Date the Lessee will, at its own cost and expense, at the request of the Lessor cause each Unit to be transported to such point or points on any lines of railroad or premises within the Continental United States as shall be reasonably designated by the Lessor immediately prior to such Expiration Date and arrange for the Lessor to store such Unit at such point or points for a period not exceeding sixty (60) days from the Expiration Date; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser or Lessee, the rights of inspection

granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this Section 9 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, having been maintained in accordance with Section 4 hereof, (ii) have attached or affixed thereto any part title to which is in the Lessor pursuant to Section 4 and have removed therefrom at Lessee's expense any part title to which is in the Lessee or any other person pursuant to Section 4 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 9, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with Section 6 hereof. The Lessee shall pay rental at the rate of 0.01528% per day of the Purchase Price as defined in the Schedule of any Unit not returned to the Lessor in accordance with this Section 9.

Section 10. Assignment.

All or any of the right, title or interest of Lessor in and to this Lease, and the rights, benefits and advantages of Lessor here-

under, including the rights to receive payment of rental or any other payment hereunder, and title to the Units, may be assigned or transferred by Lessor at any time, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from Lessor. Any such assignment or transfer shall be subject and subordinate to the terms and provisions of this Lease and the rights and interests of Lessee hereunder. No assignment of this Lease or any right or obligation hereunder whatsoever may be made by Lessee or any assignee of Lessee without the prior written consent of Lessor.

Section 11. Further Assurances.

Lessee will, at its expense, do and perform any other act and will execute, acknowledge, deliver, file, register and record any further instruments which Lessor may reasonably request in order to protect Lessor's title to the Units, this Lease, and the rights and benefits thereof. This Lease and the Acceptance Supplement shall be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act prior to the Availability Date of any Unit hereunder to which such documents relate.

Section 12. Late Payments.

Lessee shall pay to Lessor, on demand, interest at the rate of ten (10%) percent per annum on the amount of any payment not made when due hereunder from the due date thereof until payment is made.

Section 13. Effect of Waiver.

No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default of Lessee hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Lessor or any breach or default under this Lease must be in writing specifically set forth.

Section 14. Survival of Covenants.

All covenants of Lessee under Sections 2, 4, 5, 6, 8, 9 and 12 shall survive the expiration or termination of this Lease to the extent required for their full observance and performance.

Section 15. Applicable Law; Effect and Modification of Lease.

15.1 This Lease shall be governed by, and construed under the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

15.2 This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all prior agreements, oral or written, with respect

thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing.

Section 16. Financial Information and Reports.

Lessee and Guarantor shall keep their books and records in accordance with generally accepted accounting principles and practices consistently applied and shall deliver to Lessor the quarterly and annual report to stockholders of Tiger International, Inc., certified by a firm of independent public accountants, and such other unaudited financial statements as may be reasonably requested by Lessor.

Lessee and Guarantor shall deliver or cause to be delivered to Lessor on or prior to March 31 of each year of the Lease term an annual statement as to the physical condition of the Units as of the preceding December 31.

Section 17. Notices.

All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first-class postage prepaid, or delivered to a telegraph office, charges prepaid, addressed as follows:

To Lessor:

EXCHANGE NATIONAL BANK OF CHICAGO  
at LaSalle and Adams Streets  
Chicago, Illinois 60690

Attention: Corporate Trust Officer

To Lessee:

NAC LEASING CORPORATION  
222 South Riverside Plaza  
Chicago, Illinois 60606

or at such other address as may hereafter be furnished in writing by either party to the other.

Section 18. Counterparts.

Five counterparts of this Lease have been executed by the parties hereto, each of which so executed shall be deemed to be an original and such counterparts together shall contribute but one and same instrument. One counterpart has been prominently marked "Lessor's Copy" and shall be deemed the original counterpart for chattel paper financing purposes. One counterpart has been prominently marked "Lessee's Copy".

Section 19. Recording, Expenses.

Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act prior to the delivery and acceptance of any Unit hereunder.

Section 20. Miscellaneous.

Lessor shall not permit any amendment or modification to the Diamond Shamrock Lease without the consent of Lessee, which consent shall not be unreasonably withheld. References herein to Diamond Shamrock Corporation are deemed to include any permitted successor

or assign of Diamond Shamrock Corporation under the Diamond Shamrock Lease. Lessor agrees to provide to Lessee such information as may be reasonably available to the Lessor with respect to the Units and/or Diamond Shamrock Corporation including, but not limited to, such information as is specified in Section 8 of the Diamond Shamrock Lease.

Section 21. Immunities; No Recourse.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor, are made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said national association personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said national association not in its own right, but solely in the exercise of the power expressly conferred upon it as trustee under the Trust Agreement; and except in the cases of negligence or wilful misconduct no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said national association or the Beneficiary on account of this Lease or on account of any representations, undertakings or agreements of the said national association or the Beneficiary, either expressed or implied, all such personal liability against said Bank or the Beneficiary, if any, being expressly waived and released by the Lessee, the Agent and by all persons claiming by, through or under either of them.



IN WITNESS WHEREOF, the parties hereto have executed this Lease  
as of the day and year first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Owner-Trustee

By

*Richard L. McMan*  
Vice President

(SEAL)

Attest:

*Melvin J. Finter, A.T.O.*

NAC LEASING CORPORATION

By

Its

*A. H. Tillman* *pp*  
President

(SEAL)

Attest:

*R. Edward Bates*

ACCEPTANCE SUPPLEMENT

Reference is made to the Lease Agreement dated as of July 15, 1978, between EXCHANGE NATIONAL BANK OF CHICAGO, as Owner-Trustee and NAC LEASING CORPORATION, as Lessee. The terms used herein shall have the same meaning as such terms have in such Lease Agreement.

The undersigned certifies that the following Units have become subject to and governed by the provisions of the Lease, and that Lessee is obligated to pay the rentals and all other sums provided for in the Lease with respect to such Units.

<u>Description of Units</u>	<u>Identifying Number</u>	<u>Purchase Price</u>
-----------------------------	---------------------------	-----------------------

Total Purchase Price	\$ _____
----------------------	----------

The Delivery Date in respect of such Units is: January 1, 1999.

IN WITNESS WHEREOF, the undersigned has executed this Acceptance Supplement as of the date set forth above.

NAC LEASING CORPORATION

By \_\_\_\_\_

## SCHEDULE

### Section 1. Description of Units and Maximum Purchase Price.

<u>Description</u>	<u>Estimated Unit Cost</u>
100-Ton Roller Bearing CF 5250 Hopper Cars equipped with 20" hatches and pneumatic outlets, built to Specification	\$ 46,000.00

### Section 2. Term.

The lease term for each Unit shall be sixty (60) months commencing as of 12:00 midnight, January 1, 1999 (or such later date of delivery as shall occur in accordance with subsection 1.1 hereof); however, in no event shall the term for any Unit extend beyond 12:00 midnight, January 1, 2004.

### Section 3. Rental.

The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, ten (10) consecutive semi-annual payments payable on January 1 and July 1 of each year commencing July 1, 1999. The ten (10) semi-annual rental payments shall each be in an amount equal to 2.7500% of the Purchase Price of each Unit then subject to this Lease.

If any of the semi-annual rental payment dates referred to above is not a business day, the semi-annual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day on which banking institutions in San Francisco, California, or Chicago, Illinois, are authorized or obligated to remain open.

Section 4. Availability Date.

January 1, 1999

Section 5. Location.

Continental United States or Canada

Section 6. Casualty Value and Termination Value.

The Casualty Value and Termination Value of each Unit as of each rental payment date in respect thereto shall be that percentage of the Purchase Price of such Unit as is set forth below opposite the number of rental payments in respect of such Unit which would have become due to and including such date.

<u>Rental Payment No.</u>	<u>Percentage</u>
1	35.3457%
2	31.6861
3	32.7318
4	31.0776
5	29.3496
6	27.5753
7	25.7273
8	23.8247
9	21.8413
10	20.0000

Section 7. Early Termination.

Provided that the Lease has not been earlier terminated and the Lessee is not in default thereunder, Lessee shall have the right of its option, during the term of the Lease on at least sixty (60) days' prior written notice to Lessor, to terminate the Lease with respect to any or all of the Units subject to the Lease on a day or days when a rental payment in respect of each such Unit is due (hereinafter for purposes of this paragraph called with respect to each such Unit the "Termination Date"), specified in such notice, provided that Lessee shall have made a good faith determination that the Units are obsolete or surplus to Lessee's requirements. During the period from the giving of such notice until the Termination Date, Lessee as agent for Lessor, shall use its best efforts to obtain bids for the purchase of each such obsolete or surplus Unit described in such notice. Lessee shall certify to Lessor in writing the amount and terms of each bid received by Lessee and the name and address of the party (who shall not be Lessee or any person, firm or corporation affiliated or a shareholder of Lessee) submitting such bid. On each such Termination Date, Lessor shall, without recourse or warranty, sell such Unit for cash to the bidder who shall have submitted the highest bid prior to such date. The total sale price realized at such sale shall be retained by Lessor and, in addition, on each such Termination Date, Lessee shall pay to Lessor the excess, if any, of the Termination Value, as defined below, for the Unit computed as of such date, over the sale price of the Unit sold by Lessor after all expenses incurred by or for Lessor in connection with such sale. The

Termination Value with respect to any Unit as of each rental payment date in respect thereto shall be equal to the Casualty Value applicable on such date. If no sale shall have occurred on or as of the Termination Date, the Lease shall continue in full force and effect as to the Unit; provided, however, that Lessee may subsequently terminate, or attempt to terminate, the Lease in respect of any Unit pursuant to this paragraph during the remaining term. In the event of any such sale and upon compliance by Lessee with the provisions of this paragraph, the obligation of Lessee to pay rent hereunder with respect to such Unit after the Termination Date shall cease and the term for such Unit shall end on the Termination Date.

Section 8. Tax Indemnification.

8.1 This Lease and the Lease of Railroad Equipment dated as of July 15, 1978, between Lessor, as Lessor, and Diamond Shamrock Corporation, as Lessee (the "Diamond Lease"), together hereinafter referred to as the "Leases", have been entered into upon the assumption that:

(a) The Lease will constitute true leases for Federal income tax purposes.

(b) The Lessor shall be entitled to such deductions, credits and other tax benefits as are provided by Federal, state and local law to an owner of property ("Tax Benefits") including, without limitation:

(i) The deduction for depreciation of the Units under various sections of the Code based upon (A) depreciation by Lessor over useful life of 12 years (as provided by the

lower limit for assets includable in Asset Guideline Class 00.25 as published in Rev.Proc.77-10), (B) salvage value equal to zero (0%) percent of the Purchase Price of the Units (after reduction as provided for in Section 167(f) of the Code), and (C) utilization of double declining balance method of depreciation switching to sum-of-the-years-digits method when most beneficial to the Lessor using an original basis equal to the Purchase Price; and

(ii) The deduction under Section 163 of the Code of the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting, which interest is payable by Lessor in connection with the issuance of the Secured Notes as such term is defined in Security Agreement dated July 15, 1978, between Lessor and First Pennsylvania Bank N.A.

8.2 If Lessor shall not have or shall lose the right to claim, or if there shall be disallowed or recaptured with respect to Lessor, all or any portion of the Tax Benefits as are provided to an owner of property with respect to any Unit ("Loss") as a direct result of any act or omission of Lessee or if any representation made by Lessee, its affiliates and their officers or employees, in connection with

this Lease is rendered untrue or inapplicable by the Internal Revenue Service, then on the next succeeding rental payment date (whether under the Diamond Lease or this Lease) provided that such Loss is not subject to indemnification under the Diamond Lease, after written notice to Lessee by Lessor that a Loss has occurred, or if there be no such date, thirty days following such notice, Lessee shall pay Lessor, as additional rent, either computed as a lump sum payment or as future rental increases, at the option of the Lessee, an amount which, in the reasonable opinion of Lessor and after deduction of all taxes required to be paid by Lessor with respect to the receipt of such amount, will cause the Lessor's net after-tax return over the term of the Lease in respect of such Unit to equal the net after-tax return that would have been available if Lessor had been entitled to the utilization of all the lost Tax Benefits.

For purposes of this subsection 8.2, whenever it may be necessary to compute the amount of an indemnity payment with respect to a Loss for any purpose, such computation shall be made on the assumption that Lessor could have fully utilized the Tax Benefits and that the receipt by Lessor of any such indemnity payment will be subject to a Federal income tax equal to the statutory rate applicable to Lessor on the date such indemnity is paid.

8.3 For purposes of this Section 8, a Loss shall occur upon the earliest of (a) the happening of any event (such as disposition or change in use of any Unit) which may cause such Loss, (b) the payment by Lessor to the Internal Revenue Service of the Tax increase resulting from such Loss, or (c) the adjustment of the tax return of Lessor to reflect such Loss.



8.4 Upon receipt by Lessor of a written notification from the Internal Revenue Service ("IRS") of a disallowance, a proposed disallowance or an adjustment for which an amount may be payable by Lessee as a result of a Loss in accordance with this Section 8 (hereafter called a "Disallowance"), Lessor shall promptly notify Lessee of said Disallowance after receipt of such written notification from the IRS (which notice to Lessee shall include all relevant information relating to such Disallowance which may be particularly within the knowledge of Lessor, including, but not limited to, the assumptions and computations utilized by the Lessor in originally evaluating this Lease transaction and in determining such Loss).

Lessor shall contest such Disallowance if:

(a) Lessee requests Lessor to contest such Disallowance within twenty (20) days after Lessor has so notified Lessee and within forty-five (45) days thereafter independent tax counsel selected by Lessee and approved by Lessor ("Independent Tax Counsel"), which approval shall not be unreasonably withheld, renders a written opinion that there is a reasonable basis to contest such Disallowance; and

(b) Lessee agrees to pay on demand all reasonable expenses, including, without limitation, the fees and disbursements of such Independent Tax Counsel, paid or incurred by the Lessor in connection with contesting such claim.

The Lessor, at its sole option, may choose to forego any and all administrative appeals, proceedings, hearings and conferences with the IRS in respect of such Disallowance; but if Lessor elects to

forego any of the preceding administrative remedies, it shall contest the Disallowance in a court of competent jurisdiction selected by it at its sole option.

At all stages of any contest of a Disallowance, Lessor shall conduct the contest by any proceedings available under applicable law, regulation or court rules which, in its sole discretion, it determines to pursue, and shall determine in its sole and exclusive discretion whether (A) to petition for a redetermination of the deficiency proposed to be assessed by the IRS as a result of the Disallowance or (B) to pay the deficiency and institute an action in a court of competent jurisdiction for a refund of taxes paid.

If after actual receipts by Lessor of an amount paid by Lessee and attributable to a Loss of Tax Benefits, the extent of such Loss shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of Lessee, within thirty (30) days, Lessor shall pay to Lessee all or the portion of the amount received by Lessor and paid by Lessee with respect to such Loss which Lessor did not incur because of such final judgment or compromise. Notwithstanding the foregoing, Lessor shall not be required to make any payment hereunder so long as an Event of Default (or an event which with the passage of time or notice or both would constitute an Event of Default) shall have occurred and be continuing.

8.5 All of the Lessor's rights and privileges arising from the indemnities contained in this Section 8 shall survive the expiration or other termination of this Lease.

8.6 For purposes of this Section 8, the term "Lessor" shall include any affiliated group (within the meaning of Section 1504 of the Code) of which Lessor is a member for any year in which a consolidated income tax return is filed for such affiliated group.